IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

Cr. Appeal No.645 of 2000.

Date of decision: September 26th, 2007.

State of Himachal Pradesh. ……. Appellant.

Vs.

Vijay Kumar and others. ……. Respondents.

Coram

The Hon'ble Mr.Justice Surinder Singh, Judge.

Whether approved for reporting?No.

For the Appellant: Mr.D.S. Nainta, Deputy Advocate General.

For the Respondents: Mr. Ajay Sharma, Advocate.

Surinder Singh, J (oral):

The State has assailed the acquittal of the respondents in this appeal.

Heard and gone through the record.

Precisely, the facts of the case are that there are five shops in a line at the place of alleged incident and middle shop belongs to the complainant Ram Sharma.

According to the case of the prosecution, on 5.3.1991, Ram Sharma was present in his shop, at about 6 p.m., one of the respondent Chaman Lal alias Cheema, who was under the influence of liquor came there and started abusing him and told him that "**PUNJABI KUTE BAHAR NIKAL"** and gave him slap. In the meantime, father of the complainant Ram Lybhaya came there and consoled the respondent Cheema to return back, Cheema retracted and Ram Sharma put his shutter down. After some time, accused Cheema alias Chaman Lal along with other respondents visited the shop of the complainant and again abused him and threw stones

---

Whether reporters of local Papers may be allowed to see the judgment? Yes.

on the shutter and broke open the shutter forcing their entering inside the shop. The complainant raised hue and cry and tried to protect himself with the Kirpan which was kept in his shop. Respondent Jaspal also sustained injuries. The complainant lodged report with the police, wherein he named eye witnesses Balram Sharma and Pran Nath was mentioned. The police visited the spot, got the complainant medically examined and FIR was lodged under Sections 147,148, 149, 452, 323, 324 and 506 of the Indian Penal Code. After completing the investigation, the case was presented in the court for trial.

Charges under the aforesaid sections were put to them. They pleaded not guilty and claimed trial. In order to prove their case, prosecution examined the witnesses and the respondents were also examined under Section 313 of the Code of Criminal Procedure. They denied the incident and maintained their innocence. Upon complete trial and after hearing the parties, the respondents were acquitted. Their acquittal has been assailed in this appeal on law and facts.

I have reappraised the evidence on record. Pran Nath (PW3) was named as an eye witness, but he did not say anything about the alleged incident. The prosecution examined him only for the purpose of recovery of the wearing apparels of the complainant. He is the brother in law of Ram Lubhaya (PW9), who is the father of the complainant. Another eye witness is Parvesh Kumar (PW4), whose name has not been mentioned in the FIR, he has stated that he did not know the respondents. Again on his re-examination, he improved his version that he knew the respondents from the very beginning. Thus, the conduct of the witness has become doubtful and unreliable. Balram Sharma is another witness who has been named in the first information report Ext.PW10/A. He has been

examined as PW6, but he has only stated that he knew Cheema, Yashpal, Billa and Manna out of the respondents. He is the brother of the complainant and according to him, the aforesaid persons were breaking open the shutter of the shop of his brother by hitting it with the stones and they gave beatings to his brother. When the police came to the spot, the respondents fled away. He did not know why the incident had taken place. Further according to him, the shop is situated in the Bazar. Ram Lubhaya (PW9) came later and conciled the Cheema thereafter, Cheema went away. There is no reference in the report Ext.PW1/A that Ram Lubhaya was also given beatings. On the top of it, the complainant has not stated that he had defended himself with the kirpan, but contrary to it, it is mentioned in the report (Ext.PW10/A) that he defended himself with the Mirch (pepper) which was kept in his shop, for sale, there appears no relevancy of taking of Kirpan into possession. The statement of complainant Ram Sharma, PW9 Ram Lubhaya and their witnesses Pran Nath (PW3), Parvesh Kumar (PW4) and Balram Sharma (PW6), who are close relatives do not inspire confidence because of material contradiction and substantial improvements in their version. The learned trial court has duly noticed these infirmities in their statements and had rightly recorded the judgment of acquittal, which requires no interference. Accordingly, the appeal is dismissed.

The respondents are discharged of their bail bonds entered upon by them at any time during the proceedings of this case.

September 26, 2007. **(Surinder Singh)**
(PDS) **Judge**.